

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 3, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-2456

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

MONA PARK-CHILDS AND RANDY CHILDS,

PLAINTIFFS-APPELLANTS,

V.

MROTEK'S, INC.,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Sawyer County:
THOMAS J. GALLAGHER, Judge. *Reversed and cause remanded.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Mona Park-Childs and Randy Childs appeal a summary judgment dismissing their negligence action against Mrotek's, Inc. Mona was seriously injured while on a guided horseback ride at Mrotek's, Inc.

Before departing on the horse, Mona signed an exculpatory contract.¹ The trial court ruled that the exculpatory contract barred the Childs' negligence action. We conclude that the exculpatory contract does not release Mrotek's, Inc., from liability. Therefore, we reverse the summary judgment and remand the cause for further proceedings.²

Interpretation of a contract is a question of law that we review de novo. See *Yauger v. Skiing Enterprises, Inc.*, 206 Wis.2d 76, 79, 557 N.W.2d 60, 61 (1996). Exculpatory contracts are not favored by the law and are to be strictly construed against the party seeking to rely on them. See *Richards v. Richards*, 181 Wis.2d 1007, 1015, 512 N.W.2d 118, 121 (1994); *Merten v. Nathan*, 108 Wis.2d 205, 210-11, 321 N.W.2d 173, 176 (1982).

The exculpatory contract signed by Mona does not bar an action against Mrotek's, Inc. On its face, it only releases claims against Helen Mrotek.

¹ The contract provided in relevant part:

In consideration of Helen Mrotek, doing business under the name and style of Mrotek's, Incorporated, entering into contract for hire of a horse or horses, with the undersigned, and for other valuable considerations, receipt of which is hereby acknowledged, the undersigned does hereby release and hold Helen Mrotek HARMLESS from any LIABILITY FOR INJURIES or DAMAGES SUFFERED or CAUSED by reason of the hire of said horse, or horses, under this contract. It being understood that Helen Mrotek makes NO representations, or warranties, expressed or implied, as to the character, habits, soundness and disposition of the horse, or horses hired under this contract, and the undersigned expressly WAIVES ALL CLAIMS FOR DAMAGES for misrepresentations, fraud, breach of warranty, negligence, or breach of contract, and the undersigned ASSUMES ALL RISKS and hazards incident or relative to this contract. The undersigned agrees to be financially responsible for themself and for his/her child if injured.

² Because resolution of this issue is dispositive, we need not address the other issues raised on appeal. *Sweet v. Berge*, 113 Wis.2d 61, 67, 334 N.W.2d 559, 562 (Ct. App. 1983)

Although Mrotek's, Inc., is referred to in the first sentence of the contract, it is not specifically released or held harmless by the language of the contract. Because this exculpatory contract must be strictly construed against Mrotek's, Inc., the language releasing Helen Mrotek cannot be expanded to include Mrotek's, Inc.

By the Court.—Judgment reversed and cause remanded for further proceedings.

This opinion will not be published. *See* RULE 809.23(1)(b)5 , STATS.

